SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/20/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000086

FILED: _____

STATE OF ARIZONA

JOHN L BELATTI

v.

JAMES BRUNEN

CAMERON A MORGAN

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #CR200029978

Charge: CT 1. INTERFERING WITH JUDICIAL PROCEEDINGS

DOB: 04/05/53

DOC: 10/22/00

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the present case, Appellant was found guilty of violating an order of protection. Appellant argues that "there was no phone contact in this case."[1] Appellant forwarded a voice message, from a third party, to his ex-wife, Merry Brunen, that included Appellant's own voice saying, *"Jim, Brunen – I think this message is for you. I thought you should have it*." The order of protection precluded Appellant from contacting Merry Brunen in person or by telephone. Contrary to Appellant's argument, there is nothing vague in the order concerning the forms of prohibited contact. Appellant's phone call was a clear violation of the order. This issue directly concerns the sufficiency of evidence offered at the lower court. A careful review of the record provides substantial evidence to support the action of the lower court.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[2] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[3] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[4]

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[5] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[6] The Arizona Supreme Court has explained in *State v. Tison*[7] that "substantial evidence" means:

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[1] See Appellant's Opening Memorandum, Legal Argument 3(a) on pg. 10.
[2] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).
[3] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[4] *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[5] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[6] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[7] SUPRA.

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[8]

Appellant further argues that there was a conflict of interest and appearance of impropriety when the Scottsdale Prosecutor's Office conflicted-out police incident reports filed by Appellant, involving Merry Brunen as a suspect, to the Mesa Prosecutor's Office. It is well settled that motions to disqualify due to conflict of interest or appearance of impropriety should be viewed with suspicion.[9] Nothing on the record suggests impropriety or conflict of interest. Accordingly, the forwarding of the reports to the Mesa Prosecutor's Office was proper.

Appellant's attempts to brand the statute under which Appellant was charged as "overbroad" and "vague" are fruitless. A defendant whose conduct is clearly proscribed by the core of the statute has no standing to attack the statute. One, to whose conduct the statute clearly applies, may not successfully challenge it for vagueness.[10] Further, a statute is not subject to an overbreadth challenge if the legitimate interests and reach of the statute dwarfs its arguably impermissible applications.[11] Courts curtail overbreadth attacks when expressive conduct falls within the scope of an otherwise valid criminal law that reflects legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.[12] Arizona clearly has a legitimate state interest in using its system of criminal laws to protect the public from menacing telephonic threats to harm one's person or property.[13]

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[8] Id. at 553, 633 P.2d at 362.
[9] *Gomez v. Superior Court for Pinal County*, 149 Ariz. 223, 717 P.2d 902 (App. 1986).
[10] *State v. Baldenegro*, 188 Ariz. 10, 932 P.2d 275 (Ariz.App. 1996).

[11] *State v. Musser*, 194 Ariz. 31, 977 P.2d 131, (Ariz. 1999), quoting *New York v. Ferber*, 458 U.S. 747, 773, 102 S.Ct. 3348, 3363, 73 L.Ed.2d 1113 (1982).
[12] *Musser*, 194 Ariz. 31, 32, 977 P.2d 131, 132, quoting *Broadrick*, 413 U.S. at 615, 93 S.Ct. at 2917.
[13] *State v. Bly*, 127 Ariz. 370, 371, 621 P.2d 279, 280 (1980).

Appellant produced a hypothetical wherein he argued that the statute under which he was convicted would qualify as "overbroad," and would produce draconian results. The mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge.[14] Note that our courts are not "roving commissions assigned to pass judgment on the validity of the nation's laws."[15]

IT IS THEREFORE ORDERED affirming the decision of the Scottsdale Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further, if any, and future proceedings.

[14] *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 799, 104 S.Ct. 2118, 2126, 80 L.Ed.2d 772 (1984);

[15] *Musser*, 194 Ariz. 31, 32, 977 P.2d 131, 132, quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11, 93 S.Ct. 2908, 2915, 37 L.Ed.2d 830 (1973).